

1 DANIEL G. SWANSON, SBN 116556  
2 dswanson@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
3 Los Angeles, CA 90071  
Telephone: 213.229.7000  
4 Facsimile: 213.229.7520

5 CYNTHIA E. RICHMAN (D.C. Bar No.  
492089; *pro hac vice*)  
6 crichman@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
7 1050 Connecticut Avenue, N.W.  
Washington, DC 20036  
8 Telephone: 202.955.8500  
Facsimile: 202.467.0539

9 JULIAN W. KLEINBRODT, SBN 302085  
10 jkleinbrodt@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
11 One Embarcadero Center, Suite 2600  
San Francisco, CA 94111  
12 Telephone: 415.393.8200  
Facsimile: 415.393.8306

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MARK A. PERRY, SBN 212532  
mark.perry@weil.com  
JOSHUA M. WESNESKI (D.C. Bar No.  
1500231; *pro hac vice*)  
joshua.wesneski@weil.com  
WEIL, GOTSHAL & MANGES LLP  
2001 M Street NW, Suite 600  
Washington, DC 20036  
Telephone: 202.682.7000  
Facsimile: 202.857.0940

MORGAN D. MACBRIDE, SBN 301248  
morgan.macbride@weil.com  
WEIL, GOTSHAL & MANGES LLP  
Redwood Shores Pkwy, 4th Floor  
Redwood Shores, CA 94065  
Telephone: 650.802.3044  
Facsimile: 650.802.3100

Attorneys for Defendant APPLE INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.

Case No. 4:20-cv-05640-YGR-TSH

Plaintiff, Counter-defendant  
v.

**APPLE INC.'S STATEMENT IN SUPPORT  
OF ADMINISTRATIVE MOTION TO SEAL**

APPLE INC.,

The Honorable Yvonne Gonzalez Rogers

Defendant, Counterclaimant

## TABLE OF CONTENTS

	<u>Page</u>
LEGAL STANDARD.....	1
DISCUSSION .....	2
CONCLUSION.....	4

## TABLE OF AUTHORITIES

		<u>Page(s)</u>
2		
3	<u>Cases</u>	
4	<i>Al Otro Lado, Inc. v. Wolf,</i> 2020 WL 5422784 (S.D. Cal. Sept. 10, 2020).....	2
5		
6	<i>In re Anthem, Inc. Data Breach Litig.,</i> 2018 WL 3067783 (N.D. Cal. Mar. 16, 2018).....	2
7		
8	<i>Apple Inc. v. Rivos, Inc.,</i> 2024 WL 1204115 (N.D. Cal. Mar. 21, 2024).....	1, 3
9		
10	<i>DNA Genotek Inc. v. Spectrum Sols., L.L.C.,</i> 2023 WL 4335734 (S.D. Cal. May 10, 2023).....	2, 3
11		
12	<i>Ervine v. Warden,</i> 214 F. Supp. 3d 917 (E.D. Cal. 2016).....	2
13		
14	<i>Kamakana v. City and Cnty. of Honolulu,</i> 447 F.3d 1172 (9th Cir. 2006) .....	1, 2
15		
16	<i>Krommenhock v. Post Foods, LLC,</i> 2020 WL 2322993 (N.D. Cal. May 11, 2020) .....	3
17		
18	<i>Lamartina v. VMware, Inc.,</i> 2024 WL 3049450 (N.D. Cal. June 17, 2024) .....	2
19		
20	<i>Lee v. Great Am. Life Ins. Co.,</i> 2023 WL 8126850 (C.D. Cal. Nov. 13, 2023).....	2
21		
22	<i>Phillips v. Gen. Motors Corp.,</i> 307 F.3d 1206 (9th Cir. 2002) .....	1, 3
23		
24	<i>PQ Labs, Inc. v. Qi,</i> 2014 WL 4617216 (N.D. Cal. Sept. 15, 2014) .....	1
25		
26	<i>Rembrandt Diagnostics, LP v. Innovacon, Inc.,</i> 2018 WL 1001097 (S.D. Cal. Feb. 21, 2018) .....	2
27		
28	<i>Snapkeys, Ltd. v. Google LLC,</i> 2021 WL 1951250 (N.D. Cal. May 14, 2021) .....	2, 3
29		
30	<i>UnifySCC v. Cody,</i> 2023 WL 7170265 (N.D. Cal. Oct. 30, 2023).....	3
31		
32	<i>Vineyard House, LLC v. Constellation Brands U.S. Ops., Inc.,</i> 619 F. Supp. 3d 970 (N.D. Cal. 2021) .....	2
33		

<i>Williams v. Apple Inc.</i> , 2021 WL 2476916 (N.D. Cal. June 17, 2021) .....	3
<b>Other Authorities</b>	
Federal Rule of Civil Procedure 26(c) .....	1
Local Rule 79-5.....	1

Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Apple Inc. (“Apple”) submits this statement in support of Epic Games, Inc.’s Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed Pursuant to Civil Local Rule 79-5 (Dkt. 1304) (“Epic’s Motion”). Apple respectfully requests that the Court partially seal Epic’s Motion for Relief from a Nondispositive Pretrial Order of a Magistrate Judge (Dkt. 1305) (“Epic’s Motion for Relief”) and Exhibit A to Epic’s Motion for Relief (“Exhibit A”), because they contain information sealable under controlling law and Local Rule 79-5. Epic’s Motion for Relief and Exhibit A contain competitively sensitive, non-public information regarding Apple’s engagement of outside legal counsel and consultants in connection with press and communications legal strategy. Exhibit A also contains excerpts from Apple’s privilege log prepared for the Special Masters conducting evaluation of the privilege claims stemming from Apple’s re-review. The privilege log entries are required to be filed under the terms of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the “Protocol”), but contain personally identifiable information in the form of email addresses of Apple employees.

Apple’s proposed redactions of Epic’s Motion for Relief and Exhibit A are indicated in the redacted version filed with this statement and itemized in the concurrently filed Declaration of Mark A. Perry (the “Perry Declaration”).

## **LEGAL STANDARD**

“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including preventing the disclosure of information. *See Fed. R. Civ. P. 26(c)*. The Court has “broad latitude” “to prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or confidential information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original); *see also Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (compelling circumstances exist to seal potential release of trade secrets) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)); *PQ Labs, Inc. v. Qi*, 2014 WL 4617216, at \*1 (N.D. Cal. Sept. 15, 2014) (granting multiple motions to seal where publication would lead to the disclosure of trade secrets); *Apple Inc. v. Rivos, Inc.*, 2024 WL 1204115, at \*1 (N.D. Cal. Mar. 21, 2024) (granting request to seal “internal product codenames” and noting that a prior request for the same had

1 also been granted). Courts often find good cause exists to seal personally identifiable information. *See,*  
 2 *e.g.*, *Snapkeys, Ltd. v. Google LLC*, 2021 WL1951250, at \*3 (N.D. Cal. May 14, 2021) (granting motion  
 3 to file under seal personally identifiable information, including email addresses and telephone numbers  
 4 of current and former employees).

5 Although a party must show compelling circumstances to seal information appended to  
 6 dispositive motions, the standard for non-dispositive motions is simply “good cause.” *In re Anthem, Inc.*  
 7 *Data Breach Litig.*, 2018 WL 3067783, at \*2 (N.D. Cal. Mar. 16, 2018); *Rembrandt Diagnostics, LP v.*  
 8 *Innovacon, Inc.*, 2018 WL 1001097, at \*1 (S.D. Cal. Feb. 21, 2018); *see DNA Genotek Inc. v. Spectrum*  
 9 *Sols., L.L.C.*, 2023 WL 4335734, at \*2 (S.D. Cal. May 10, 2023). In general, requests to seal information  
 10 should be narrowly tailored “to remove from public view only the material that is protected.” *Ervine v.*  
 11 *Warden*, 214 F. Supp. 3d 917, 919 (E.D. Cal. 2016); *Vineyard House, LLC v. Constellation Brands U.S.*  
 12 *Ops., Inc.*, 619 F. Supp. 3d 970, 972 n.2 (N.D. Cal. 2021) (Gonzalez Rogers, J.) (granting a motion to  
 13 seal “because the request is narrowly tailored and only includes confidential information”).

## 14 DISCUSSION

15 Apple seeks to seal details regarding its engagement of certain outside counsel and consultants  
 16 appearing in Epic’s Motion for Relief and Exhibit A. Apple also seeks to seal personally identifiable  
 17 information in Exhibit A. *See Perry Decl.* ¶ 5.

18 Apple’s administrative motion to seal is subject to the “good cause” standard because it concerns  
 19 non-dispositive objections related to discovery. *See, e.g.*, *Kamakana*, 447 F.3d at 1179 (“[T]he public  
 20 has less of a need for access to court records attached only to non-dispositive motions because those  
 21 documents are often unrelated, or only tangentially related, to the underlying cause of action.”); *Lee v.*  
 22 *Great Am. Life Ins. Co.*, 2023 WL 8126850, at \*2 (C.D. Cal. Nov. 13, 2023) (“Matters concerning  
 23 discovery generally are considered nondispositive of the litigation” (quotation omitted)); *see also In re*  
 24 *Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at \*2; *Rembrandt Diagnostics, LP*, 2018  
 25 WL1001097, at \*1; *Al Otro Lado, Inc. v. Wolf*, 2020 WL 5422784, at \*4 (S.D. Cal. Sept. 10, 2020).

26 Apple’s sealing request meets the good cause standard here. *Lamartina v. VMware, Inc.*, 2024  
 27 WL 3049450, at \*2 (N.D. Cal. June 17, 2024) (good cause to seal internal email communications). Apple  
 28 operates in an intensely competitive environment, and thus has taken extensive measures to protect the

1 confidentiality of its information. *See Perry Decl.* ¶ 3. Disclosure of the sealed information in Epic’s  
 2 Motion for Relief and Exhibit A relating to the confidential engagement of outside counsel and  
 3 consultants could harm Apple’s business interests. *Id.* ¶ 5; *see also DNA Genotek Inc.*, 2023 WL  
 4 4335734, at \*2 (finding good cause where disclosure would “undercut” a party’s “position … in the  
 5 marketplace”). Additionally, courts in this district have found not only good cause, but compelling  
 6 reasons exist to seal personally identifiable information, contained in Exhibit A. *See Snapkeys*, 2021  
 7 WL 1951250, at \*3 (granting motion to file under seal personally identifiable information, including  
 8 email addresses and telephone numbers of current and former employees); *see also UnifySCC v. Cody*,  
 9 2023 WL 7170265, at \*1 (N.D. Cal. Oct. 30, 2023) (finding compelling reasons to seal personally  
 10 identifying information of employees, including names, addresses, phone numbers, and email  
 11 addresses).

12 Apple has narrowly tailored its sealing request to include only the information necessary to  
 13 protect its confidential business information and personally identifiable information. *See Krommenhock*  
 14 *v. Post Foods, LLC*, 2020 WL 2322993, at \*3 (N.D. Cal. May 11, 2020) (granting motion to seal  
 15 “limited” information); *see also Phillips*, 307 F.3d at 1211; *Williams v. Apple Inc.*, 2021 WL 2476916,  
 16 at \*2–3 (N.D. Cal. June 17, 2021) (noting Apple’s narrowed sealing requests with “tailored redactions”);  
 17 Dkt. No. 643 at 3 (finding Apple’s proposed redactions appropriate for an exhibit when redactions were  
 18 “narrowly tailored” to “sensitive and confidential information”). Apple has only partially redacted  
 19 limited information in both Epic’s Motion for Relief and Exhibit A. *See Perry Decl.* ¶ 5.

20 For the foregoing reasons, there is good cause that warrants partially sealing Epic’s Motion for  
 21 Relief and Exhibit A.

## 22 CONCLUSION

23 Apple respectfully requests that the Court seal the information identified in the accompanying  
 24 declaration.

25  
 26  
 27  
 28

1 Dated: March 11, 2025

Respectfully submitted,

2 By: Mark A. Perry

3 Mark A. Perry

4 WEIL, GOTSHAL & MANGES LLP

5 Attorney for Apple Inc.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28